of both real and personal estate *prima facie* includes the intermediate income of both. This general rule may also be rebutted by other parts of the Will. The case of *In re Townsend*, 34 Ch. D. page 357, which was relied on as showing that there was an intestacy of the surplus income under clause 8, was a case where from the words of the Will it was obvious that the testator did not mean the remaindermen to enjoy the intermediate income. In the Will now before the Court no such intention can be found, and further than this the concluding words of clause 8 which require the trustees to invest the surplus income in the purchase of landed property indicate that the testator had not lost sight of the surplus income and intended that it should follow the destination of the corpus of the estate.

There will accordingly be a declaration that under clause 10 of the Will the persons who will be entitled to the corpus of the estate after the expiration of the period of 21 years will be the persons who would have been the testator's heirs according to Mohammedan law if he had died at the expiration of the period of 21 years. The corpus to be divided will include the accumulations of surplus income or the investments representing such accumulations. The costs of all parties will be taxed as between solicitor and client and paid out of the residuary Estate.

Order accordingly.

Solicitor for the Plaintiffs—*S. C. Goho.*
Solicitors for the 1st Defendant—*Chan & Eber.*
Solicitors for the 2nd Defendant—
Rodyk & Davidson.
Solicitors for the 3rd Defendant—
Braddell Brothers.

[APPELLATE CIVIL JURISDICTION]

TAN HO CHER TRADING etc.

v.

YEO POH, ALIAS NEO POH, etc.

[JOHORE CIVIL SUIT No. 95 OF 1930]
[JOHORE APPEAL No. 3 OF 1931]

Land—Agreement for sale—part performance—bona fide *purchaser for value—rights under Surat Sementara—fraud—doctrine of "Caveat Emptor."*

A. bought or purported to acquire C's. rights in a certain land, comprised in a Surat Sementara, without notice that before the transfer of such rights C. had already entered into a contract for sale of the land to B who had paid a part of the purchase price. At the time of purchase A. was aware that B. had been in occupation of 6 houses on the land but did not choose to enquire as to what were the rights and interests of B.

Held, that neither A. nor B. had a title under the Land Enactment to the land in dispute, for the reason that a person who occupies State land in Johore under a Surat Sumentara has no registrable interest in the land nor has he an indefeasible title within the meaning of the Land Enactment.

Held further, that the fact that A. had the means of discovering the truth by making enquiries as to B's. rights disentitled him to any relief.

Semble, if A. had completed his title to the land and tendered a proper conveyance to B., he might have as an assignee of C., a good claim against B. for recovery of the balance of the purchase price.

The Plaintiff in this case was the purchaser of a piece of land covered by Surat Sementara No. 267/25 from one Tan Juan. The said Tan Juan was originally occupier of the said piece of land on a permit from the Government of Johore. While in such occupation he agreed to sell it to the defendant, received practically the whole of the purchase price and put the defendant into possession of the land. The defendant built certain houses and remained in occupation. During the period of the defendant's occupation the said Tan Juan got a Surat Sementara for the land agreed to be sold to the defendant issued to him by the Government of Johore and thereafter, without the knowledge of the defendant, sold it to the plaintiff. The plaintiff brought the present case against the defendant to recover possession of the land covered by Surat Sementara No. 267/25 of Kukub and for damages for wrongfully holding possession. The defendant pleaded *inter alia* that he had entered into an agreement of purchase on 1st December 1925 prior to the issue of the Surat Sementara with Tan Juan from whom the plaintiff derived his title and that he had been in occupation for several years and built houses thereon. The defendant stated further that the plaintiff had had full knowledge of the fact and must be held in equity a trustee on behalf of the defendant of all his rights of which the plaintiff had had notice.

Cases referred to:—

Hunt v. *Luck*, (1901) 1 Ch. 49

Cavender v. *Bultill*, 9 Ch. App. 79

Daniells v. *Davison*, 21 Ch. D. 9

Ang Kok Chong v. *Teo Ak Lek* and *anor.*, (Muar Civil Suit No. 25 of 1927) upheld in Civil Appeal No. 7 of 1928.

Cooper, for the Plaintiff.

Goho, for the Defendant.

Cur. Ad. Vult.
11-4-1931.

THORNE, J.—In this suit the plaintiff seeks to recover from the defendant possession of a piece of land measuring approximately 66 ft. x 108 ft. which forms part of a larger area of land said to be comprised in a Surat Sementara No. 267 of 1925.

That document, which was put in evidence as Exhibit "B." appears to have been issued from the Land Office on the 29th December 1925 in favour of a man called Tan Juan.

The plaintiff's case is that he purchased the whole of the land comprised in this Surat Sementara from the man Tan Juan; that on the 29th December 1925 Tan Juan transferred his rights in this land to the plaintiff; and that fact was recorded in the books of the Land Office and a note to that effect was made on Exhibit "B."

The plaintiff says that at the time of the purchase there were six houses on the area of land now in dispute in this action, which were then in the occupation of the defendant, but he says that the reason for his not having brought his action earlier is that he was unable to procure a survey of the land, and that it was only after the completion of the survey he ascertained beyond all doubt that the houses, or huts, in question were standing upon a part of the land which he bought. Having so ascertained he says that he called upon the defendant to demolish the huts; the defendant refused to do so, whereupon he sued.

The defendant meets the plaintiff's claim by putting in issue many of his allegations and in particular by denying that the plaintiff has any title to the land.

He says that prior to the transaction between the plaintiff and Tan Juan, he, the defendant, entered into a contract in writing with Tan Juan for the sale and purchase of the area of land upon which the six houses stand; three of the six houses he explains belonged to himself and three to Tan Juan. He says that the purchase price was $1,400 of which he paid to Tan Juan $1,150, leaving a balance of $250 owing, which sum was agreed to be paid when Tan Juan had obtained the title from the Government of Johore and transferred to the defendant the area of land which he bought.

The man Tan Juan appears to have disappeared from the District for some years, and the question involved is which of these two parties is to suffer the loss as a result of the improper conduct of Tan Juan, assuming the stories of the parties are true.

I accept the evidence of the plaintiff that he bought this land from Tan Juan, that he paid the price and went into occupation of a part of the land comprised in that Surat Sementara.

I accept the evidence of the defendant and I hold it proved that at one time he was a tenant of the land from Tan Juan; that he erected three houses upon part of the land belonging to Tan Juan under an arrangement whereby he paid rent to Tan Juan; and that subsequently, probably towards the end of the year 1925, he entered into an agreement with Tan Juan which was in writing but which has since been lost in the offices of Messrs. Braddell Bros. in Singapore.

I therefore admitted oral evidence of the contents of that written agreement and I hold it proved that the defendant agreed to buy this small strip of land from Tan Juan at the price of $1,400 of which he paid $1,150, and in regard to which he still owes $250 which will be due and payable when the proper person to perform the contract Tan Juan made has obtained a title to the land, and is in position to tender a transfer to the defendant.

Now in that state of facts, what is the law?

The plaintiff presses upon me that he is a purchaser for value without notice, and as such, is entitled to disregard the claims of the defendant, who, he says, is to suffer because of his neglect

to obtain a title from his vendor. The defendant on the other hand presses upon me that he was a buyer and in that position he had occupied the land with houses which gave notice to the world at large, including the plaintiff, that he had some rights and says that if the plaintiff does not choose to enquire the extent of those rights, he is by law fixed with notice thereof.

In the course of argument, cases from the Courts of the Federated Malay States were quoted to me, but I am of the opinion that these are of no application to the facts in this case for the reason that in my humble opinion a person who enters into occupation of State Land in Johore under a Surat Sementara has no registrable interest in the land and has on indefeasible title within the meaning of the Land Enactment. Cases, therefore, of the Federated Malay States Courts dealing with the rights of registered proprietors of land under the system of registration of title to land which obtains there have no application to the case of land occupied under Surat Sementara. If the rules made under our Land Enactment purport to create a new form of title to land under that Enactment then such rules in so far as they attempt to do that are, in my view, *ultra vires*. Whatever the rights of an occupier of land held under Surat Sementara may be as between himself on the one hand and the Government on the other hand under such rules those rules cannot create a new form of title to land.

I do not suggest for one moment that His Highness the Sultan in Council has not plenary legislative powers, but where, as in this instance, His Highness is advised to make rules under a statutory enactment the rule making power is limited by the exact wording of the section of the Enactment which confers such rule making power, and in this State it is not possible to legislate by rules; but if it is desired to create by statute a new form of title other than those which are declared created by the Land Enactment His Highness the Sultan in Council must by amendment of the existing Enactment or by new Enactment so legislate. That is a digression, but I say that because it seems to me there exists a misapprehension as to the rights of a person who holds land in this State under a Surat Sementara.

I hold that neither party to this litigation has a title to land such as is recognised by the Land Enactment. Tan Juan had certain rights of occupation of State Land with an expectation that at some later date, and subject to the happening of certain contingencies, the Government of this State would be pleased to issue to him a title. Before that title is issued Tan Juan sells or purports to sell to a man, who is already in occupation as a tenant, a part of his land, then concealing that fact from the plaintiff he sells the whole of the land to the plaintiff.

With regard to the case of the defendant, the matter rested in contract because the defendant had not paid the balance of the price.

In the case of the plaintiff, except for one matter to which I shall refer later, he did everything he could to consolidate his position with regard to the land which he bought in the state of the law as it then was.

Now the question is which of these two innocent parties as I have said must suffer for the wrongful and dishonest act of Tan Juan?

I am of the opinion that the fact that there were standing on the land in dispute buildings in the occupation of the defendant was sufficient notice to the plaintiff to put him upon enquiry as to what were the rights or interests of the defendant. The maxim "*Caveat emptor*" applies. If the plaintiff did not choose to enquire of the defendant what were his rights it seems to me that the plaintiff was at fault. I have said that the plaintiff was diligent, and I think he was, but in my humble opinion he acquired from Tan Juan only the right to occupy a certain area of land with the expectation that at some future date a title would be issued in respect of a part or the whole of that area depending upon contingencies. The plaintiff therefore is an assignee of the rights of Tan Juan and the plaintiff stands in the shoes of Tan Juan. If not, I ask myself, by what right can the plaintiff hope to persuade the Government of Johore to issue a title to him? He must apply as an assignee of the rights of Tan Juan for that title to be issued. That being so, what are his rights against the defendant? He has no title to the land, he has only rights to occupy. Tan Juan was a Licensee in possession. He gave up possession of part of the land to the defendant.

Then with the consent of his Licensor, the Government, he gives up possession of the remainder of the land to the plaintiff so that the plaintiff has never been in possession of the area of land in dispute, and on my ruling has no title thereto.

Now although the rights of the defendant may be no higher than Mr. Cooper with his usual skill has put to me, yet I find it extremely difficult to hold that the defendant in possession has no right. Suppose Tan Juan had sought in an action against this plaintiff to recover possession of the area now claimed, would not the defendant succeed if he pleaded against Tan Juan, as is the fact, that he had paid $1,150 in respect of the price and held a contract to purchase which he was ready and willing to perform? It seems to me that the plaintiff stands in no better case than Tan Juan, he being, in my view, a purchaser for value with notice of the rights of the defendant.

I hold therefore that the plaintiff is not entitled to recover the small area of land in dispute, and judgment will be entered dismissing the plaintiff's claim with costs.

I should like to make it clear that if the plaintiff being the assignee of Tan Juan completes his title of the whole area of this land, and tenders a proper conveyance to the defendant, he may very well have, as assignee of Tan Juan, a good claim against the defendant to recover the balance of the purchase price, though I express no opinion as to that because the question does not arise in the suit.

Judgment for the defendant with costs.

From the above judgment the plaintiff appealed to the Court of Appeal and the appeal came on for hearing before Sproule, Ag. C.J. and Terrell, J. After hearing the arguments on both sides, their Lordships upheld the decision of Thorne, J. and dismissed the appeal with costs.

Appeal Dismissed.

Knowles, (*Cooper* with him), for the Appellant.

Goho, for the Respondent.

[ORIGINAL BANKRUPTCY JURISDICTION]

IN RE H. E. CORDEIRO

[SINGAPORE BANKRUPTCY No. 756 OF 1931]

Bankruptcy—contribution to Provident Fund —Official Assignee's right to call in.

A Provident Fund, towards which an employee contributes a portion of his salary and the employer four times as much together with interest periodically added on thereto, is a fund of which the employer is a voluntary trustee. Upon the bankruptcy of the employee, the Official Assignee is entitled to the total amount of the fund.

In re Samykanoo, 1927 S.S.L.R. 25, distinguished. Principles in Gosling v. Gosling (Joh. 172), Wharton v. Masterman (1895) A.C. 186 and Gee v. Liddell (35 Beavan 621) applied.

Motion by the Official Assignee for an order for payment by the Hongkong and Shanghai Banking Corporation, Singapore, of a sum of £2,550.10.5 being the total amount standing to the credit of the Bankrupt in respect of a Provident Fund created by the Bank for the benefit of its employees and to which both the employer and the employee contributed.

E. N. Taylor, Assistant Official Assignee.

Smith for the Bank.

Knowles for supporting creditors.

The facts and arguments are sufficiently set out in the Judgment.

Cur. Ad. Vult.

11.4.32

COBBETT, J.—The facts which are agreed are simple. The Hongkong Bank have a provident fund scheme under which an approved employee is permitted to benefit after 5 years service. Once an employee is permitted to join 5% is deducted from his salary and four times this amount is contributed by the Bank which also periodically adds interest on the total the whole being credited to the employee. It is stated that the Bank never pay out the amount of contributions until the termination of the clerk's services.

The Bankrupt H. E. Cordeiro joined the Bank in 1908. In 1913 he joined the Provident Fund. On October 23rd 1931 he was adjudicated Bankrupt. On December 31st, 1931, the Bank by letter notified him that there was a sum of £2,550.10.5 then standing to his credit at that date in the officers Provident Fund. The Official